

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

CR. 04-50131

Plaintiff,

DEFENDANT'S FIRST
MOTION IN LIMINE

vs.

JOHN WATERS,

Defendant.

Comes now John Waters, Defendant above-named, by and through his attorney, Assistant Federal Public Defender Monica Thomas, and moves this Honorable Court for its Order in limine prohibiting the prosecution and witnesses from placing before the jury, either through testimony, by argument, or other statement, the following matters:

1. The subject incident transpired on October 20, 2004. On February 1, 2005, Agent Carl Martinez contacted Dorothy Chipps about her knowledge of the vehicle crash which occurred on October 20, 2004. Dorothy Chipps was one of the three surviving passengers in the vehicle. The vehicle crash is alleged to have occurred at approximately 10:15 p.m. Dorothy Chipps was asked during this interview if the police had chased them earlier on the day of October 20, 2004, prior to the crash. Dorothy indicated that she was passed out and did not know if that had happened and only had heard about it from John Waters (see attached underlined Exhibit 1). The government has also provided an incident report from the Winner Police Department indicating a pursuit of a vehicle matching the description of the car involved

in the instant case. This occurred approximately four hours before the crash. There is no information about who the driver was at this time.¹

2. Defendant requests that the Court prohibit any mention of the pursuit by law enforcement on the grounds that, under Rule 403, FED. R. EVID., “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury”

3. Defendant filed a Request Pursuant to 404(b) (Doc. #9). The government has not filed any notice under 404(b) that it intends to offer evidence related to prior incidents of reckless driving.

Defendant objects to such evidence on the grounds that it is not relevant and, even if the Court might find some relevance, the evidence would be excludable because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury as to the true issues in the case. Specifically, there is no witness as to who was actually driving the vehicle.

WHEREFORE, Defendant requests that the relief hereinbefore requested be granted.

¹Defendant’s counsel received the various documents referred to in this motion on February 4, 2005, at the close of business, and February 6, 2005, at approximately 5 p.m., which is the reason for the late filing of this motion.

Dated this 7th day of February, 2005.

Respectfully submitted,

JEFFREY L. VIKEN
Federal Public Defender

By:

/s/ Monica D. Thomas

Monica D. Thomas, Assistant Federal Public Defender
Attorney for Defendant
Office of the Federal Public Defender
District of South Dakota
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Rapid City, SD 57701
Telephone: 605-343-5110 Facsimile: 605-343-1498

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2005, a true and correct copy of the foregoing Defendant's First Motion in Limine was served upon the following person, by placing the same in the service indicated, addressed as follows:

Jonathan A. Kobes	<input type="checkbox"/>	U.S. Mail
Assistant U.S. Attorney	<input type="checkbox"/>	Hand Delivery
United States Courthouse	<input type="checkbox"/>	Facsimile
515 Ninth Street	<input type="checkbox"/>	Federal Express
Rapid City, SD 57701	<input checked="" type="checkbox"/>	Electronic Case Filing

/s/ Monica D. Thomas

Monica D. Thomas